



PLANNING ENFORCEMENT LOCAL ENFORCEMENT PLAN

Contents

1. Introduction
2. Key stages of investigation
3. Priorities
4. Reasons for not investigating case or for closing cases
5. Negotiations/Inviting applications
6. Expediency
7. Tools for Enforcement
8. Keeping parties informed
9. Matters that are not Breaches
10. Monitoring
11. Review
12. How to report a breach of planning control
13. Privacy Statement
14. Flowchart

1. Introduction

This policy document will describe the purpose of the Planning enforcement service and how the council will deliver the service to the community.

The Council is committed to providing an efficient and effective planning enforcement service that is transparent, consistent, proportionate, and fair. Effective enforcement is essential in establishing effective controls over unauthorised development and conserving the natural and built environment whilst safeguarding the quality of people's lives. A strong enforcement function is fundamental to maintaining public trust in the Council's decision-making and reflects its commitment to applying planning controls fairly and consistently.

This plan will enable proactive management of enforcement activities and ensure our approach reflects local priorities; clearly explaining how planning permissions will be monitored, alleged breaches investigated, and enforcement action taken where it is justified and necessary. The Council has access to a wide and comprehensive range of statutory enforcement powers and will use these where it is appropriate and expedient to do so. These powers enable the Council to respond effectively to breaches of planning control, including serious or persistent non-compliance. The Council will use its full range of enforcement powers to secure the aims of this plan, and serious or persistent breaches of planning control will be addressed through the most robust formal enforcement action.

Where criminal activity has occurred, the Council will not hesitate in involving other agencies as appropriate.

Government policy reinforces the importance of planning enforcement in maintaining confidence in the planning system and the Council is committed to responding decisively and proportionately to suspected breaches of planning control in line with that guidance.

Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

(paragraph 60 of National Planning Policy Framework)

Timely enforcement action can prevent a breach of planning control from becoming well established and bring sustained environmental harm to an end. Enforcement action however is not a means to punish an individual or organisation for breaching planning control, regardless of whether the breach was carried out deliberately or in ignorance. It cannot be used to control the activities of errant or unpopular developers, to rectify minor or insignificant technical breaches of planning control, nor as a means of furthering the interests of one party over another in neighbour or commercial disputes.

This Local Enforcement Plan identifies the priorities for enforcement action and the types of alleged breaches of planning control that will be investigated. This enables the Council's enforcement resources to be put to the best use in dealing with breaches of planning control and to ensure that enforcement action is focused on the most serious breaches which are causing greater harm. It also seeks to provide transparency and accountability about how the local planning authority will decide if it is expedient to exercise its range of powers.

2. Key stages of investigation

The key stages are summarised below and the time taken for each stage will vary depending on the nature and complexity of the alleged breach of planning control:

- Receipt of report of breach
- Decision whether reported matter should be investigated
- Categorise Breach
- Site visit and officer investigation
- Initial assessment – whether to invite application, seek agreement from Ward Member to close, whether negotiations are appropriate.
- Invitation of application (where appropriate)
- Formal action, or decision to close
- Potential further action if any formal Notice is not complied with.

3. Priorities

The Enforcement team receives over 600 reports of planning breaches per year.

To make the most effective use of resources, new reports of alleged breaches will be categorised for prioritisation based upon an initial assessment of seriousness. The assessment of seriousness will be undertaken by Enforcement Officers, and a Prioritisation Category will be assigned for each breach. Enforcement investigations and action will be focused on the most serious breaches.

There are three levels of enforcement priority as set out in the following table.

Prioritisation	Type of reported breach
Urgent (potentially criminal) (An initial site visit will be carried out 1 working day of receipt)	Where irreversible harm is likely to be caused if the Council does not act immediately
	Ongoing or recent works to listed buildings or structures without the relevant Listed Building Consent
	Ongoing or recent works to trees in conservation areas or protected by a tree preservation order
	Unauthorised removal of hedgerow contrary to Hedgerow Regulations (where works are being carried out)

Level 1 (An initial site visit will be carried out within 10 working days of receipt)	Where there is significant or immediate harm (and not falling under Urgent category)
	Where there is significant immediate harm caused to highway safety, residential amenity, SSSI, setting of heritage assets or Assets of Community Value (ACV)
	Where an application for planning permission would not be supported in principle for the development or where planning permission has been refused
	Breaches of conditions relating to live sites where condition relates to the following 1. Tree protection 2. Highway conditions
	Where development is at risk of becoming immune from enforcement action and breach is causing significant level of harm
	Failure to comply with formal Notice issued by the Local Planning Authority and where breach of Notice is causing significant level of harm
	Complaints regarding the appearance or condition of land or building where the site is within a Conservation Area or affects the setting of a Listed Building and there is a significant level of harm or public interest.

Level 2 (An initial site visit will be carried out within 20 working days of receipt)	Smaller scale breaches which do not result in significant immediate or irreversible harm but do have unacceptable planning impact
	Development not in accordance with approved plans where the changes are considered to have an unacceptable adverse impact on residential amenity or the character of the area
	Breaches of conditions which are necessary to adequately protect the amenity of neighbours
	Operational Development or changes of use which have an unacceptable adverse impact on residential amenity, the landscape or heritage assets
	Commencement of Development without complying with pre-commencement conditions that go to the heart of the permission

Officers may review the assigned Prioritisation Category for a breach from time to time in accordance with the Flowchart. For reported breaches that fall under the Urgent category the case will be reassessed after the initial site investigation to identify the level of harm and priority to be given to any potential criminal investigations.

4. Reasons for not investigating cases or for closing cases

Planning Enforcement officers will only investigate planning breaches (see Matters that are not Breaches of Planning Control section below). Equally, anonymous and/or vexatious complaints will not be investigated. Repeat complaints concerning matters which have previously been concluded will also not be investigated unless a significant change has occurred.

An enforcement case will not be raised if the information submitted with the initial report is insufficient for Officers to confirm that there is a breach of planning control or if no (or very limited) planning harm is identified.

If an alleged breach of planning control does not fall within one of the categories in the Prioritisation Table, the enforcement team will Decline to Investigate the matter.

Reasons for closing enforcement cases:

Enforcement investigations can be closed for several reasons, such as:

- there is no breach of planning control
- planning permission is not required
- it is permitted development
- the breach is rectified (by negotiation)
- planning permission has been granted retrospectively
- the development is lawful or immune from enforcement action (due to time elapsed)
- it is a trivial or minor technical breach which causes no material harm and does not warrant formal action
- the matters do not fall within one of the categories in the Prioritisation Table
- the development is acceptable on its planning merits and it is not expedient to take action).

Where a breach has been identified but it is not considered expedient to take formal action, the case will be closed in accordance with the Scheme of Delegation.

5. Negotiations/Inviting applications

In accordance with Government guidance the Council will initially try to resolve a breach of planning control by giving the contravener fair warning and by seeking to resolve the issue by negotiation, and have them remove the unauthorised development, cease the activity voluntarily or comply with the planning permission or conditions attached to any consent.

Addressing breaches of planning without formal action can often be the quickest and most effective way of achieving a satisfactory and lasting remedy.

In some instances, it may be appropriate to invite a retrospective application to regularise a development or to make a development acceptable by imposing planning conditions.

A retrospective application will only be invited where it is considered that there is a reasonable likelihood that planning permission may be granted in line with local and national planning policies or where a development may be made acceptable by way of the imposition of conditions.

Applications will generally not be invited for breaches relating to householder development or other minor breaches of planning control where the development is considered acceptable in planning terms and there is no need to control the development further by the imposition of conditions.

Where an application is invited and then submitted, the enforcement case will remain open pending the outcome of the planning application.

Only where negotiations fail to secure a satisfactory solution will formal action be considered. The Council will try to avoid the negotiations becoming protracted where there is a requirement to make the development acceptable or for a use to cease.

Where an application is received that has not been invited, The Council may continue with formal action at its own discretion. In the event that an enforcement notice has already been served, then the council may decline to determine any retrospective planning application which seeks to regularise any or all of the breaches of planning control that are referred to in the enforcement notice.

Retrospective applications will not normally be invited for listed building consent or for tree works where the works have already been carried out. For these cases an assessment will be made after the initial site visit as to whether to take any formal action. These cases will also be dealt with as a criminal investigation, so will not follow the same process set out for planning breaches.

6. Expediency (Decision Making)

Whilst the Council does not condone breaches of planning control, it is not obliged to take action against an identified breach. Even when unauthorised development has been identified not all breaches will be materially harmful and it will not always be expedient for the Council to pursue formal action.

Breaches of planning control can be deliberate, accidental, carried out in ignorance or on the basis of poor or inaccurate advice. Neither the explanation of how the breach came to occur nor the identity of the person responsible can have any bearing on the approach the Council takes.

Once a breach of planning control has been established and no application has been received to regularise the development a decision will be made on whether it is considered expedient to take formal action. The Council's decision on expediency, is informed by a number of considerations that may include:

- Has a criminal offence been committed – this applies to works to listed buildings, works to protected trees and hedgerows and failure to comply with formal notices issued
- Is the development contrary to national and/or local planning policy? (including National Planning Policy Framework, Core Strategy and Neighbourhood Development Plan policies)
- Is the development acceptable in respect of all other material considerations?
- If an application was submitted for the development, prior to it being carried out, is it likely to have been granted?
- Is the breach causing unacceptable planning harm

- Is the breach unacceptably affecting existing land, use or buildings which merit protection in the public interest?
- Is the breach at risk of becoming immune from enforcement action

Taking enforcement action must be in the public interest. Enforcement action will not be taken simply because a breach has occurred.

Where there is a risk of immunity for a breach of planning control the level of harm must be significant to warrant formal enforcement action. The period for immunity will also vary depending on the nature of the breach and when the breach first occurred.

The Council may not take formal enforcement action in all cases where a breach of planning control has been identified. It is part of the normal duties/responsibilities of the investigating Officer and the Enforcement Team Leader to ensure decisions not to pursue formal enforcement action can be properly justified having regard to the Local Enforcement Plan

7. Tools for Enforcement

The Council has a broad and significant suite of enforcement powers available to address breaches of planning control. These powers will be applied proportionately but decisively where required, and include measures ranging from formal notices through to prosecution and injunctive relief by the courts. The type of formal action taken will vary depending on the circumstances of the particular case.

The most common types of formal action are listed below (list is not exhaustive)

- Breach of Condition Notice
- Enforcement Notice
- Listed Building Enforcement Notice
- Temporary Stop Notice
- Section 215 Notice
- Prosecution
- Injunction

These measures range from requiring remedial action to the immediate cessation of unauthorised works, and, where necessary, action through the courts.

In addition, at the early stages of an investigation, the Council may serve a Planning Contravention Notice or Section 330 Notice to formally require the provision of information relevant to an alleged breach of planning control. A Section 215 Notice may be served where the condition of land or buildings adversely affects the amenity of the area. The Council will use these powers where it affects listed building or conservation areas and, by exception on a case-by-case basis in other areas where the effects are particularly acute or widespread and action is clearly in the public interest. These powers enable

the Council to require remedial works to improve appearance and address neglect. Non-compliance is an offence and may lead to prosecution or works being carried out by the Council and costs recovered.

Further information regarding planning enforcement and the enforcement tools available to Councils can be found on the government website <https://www.gov.uk/guidance/ensuring-effective-enforcement>.

The majority of types of formal action can be taken under delegated powers without the need for the formal agreement from the relevant Ward Member. For those cases where agreement is required and the Ward Member does not agree to action, the decision will be made in accordance with the Scheme of Delegation as set out in the Council's Constitution. A copy of the Constitution can be viewed on the Council's website.

For prosecution proceedings relating to any criminal investigations the Council must be satisfied that the evidential test is passed and also the public interest test is met.

8. Keeping parties informed

The Council will acknowledge reports of alleged breaches where the planning harm has been identified and where sufficient information has been received to identify the breach. Thereafter, it will update complainants on the progress of its investigation on a case by case basis.

As a minimum the Council will advise complainants of all key decisions that it takes such as inviting an application, recommending formal enforcement action or closing a case.

9. Matters that are not Breaches of Planning Control

The following are Matters that are not Breaches of Planning Control and will not be investigated by the Council's Planning Enforcement service:

- Internal works to a non-listed building;
- Obstruction of a highway or public right of way (PROW)
- Parking of commercial vehicles on the highway or on grass verges;
- Parking caravans on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property;
- Dangerous Structures
- Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity;
- Land ownership disputes or trespass issues;
- Issues relating to covenants imposed on property Deeds

- Issues relating to noise and disturbance; smell nuisance and light pollution which are investigated by our Environmental Health Team
- Issues relating to anti-social behaviour or Graffiti (unless in relation to high hedges)
- Matters relating to site security
- Sewers, soakaways and most other drainage matters
- Any works that are deemed to be 'permitted development' under the Town and Country Planning (General Permitted Development) Order 1995 as amended and or substituted;
- Advertisements that are either excepted from deemed and express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007

10. Monitoring

There is currently limited proactive monitoring of conditions so the Council relies on breaches of conditions being reported to the Enforcement team. However, an enforcement case will only be raised if there is clear evidence of the breach of condition and where planning harm arising from the breach has also been identified.

The Council is currently reviewing its systems to enable future monitoring of specific types of conditions where expediency and resources allow.

The enforcement team will investigate reports of failure to comply with clauses contained within Section 106 agreements linked to planning permissions. Two temporary dedicated officers will also deal with monitoring Section 106 agreements relating to open space provision on major development sites in the District. These types of cases will be dealt with in consultation with the Council's Solicitors.

Where there is evidence of failure to comply with the terms of a Section 106 agreement the formal action route is through injunction proceedings in the Courts. For these types of cases officers will seek to negotiate compliance in the first instance. It is only when compliance or mitigation measure cannot be secured through negotiations that formal legal proceedings will be considered.

These cases will therefore not follow the same process set out for planning breaches in the Flowchart at the end of this Policy.

The enforcement team will also assist with the monitoring of compliance with CIL Stop Notices issued under the Community Infrastructure Levy Regulations.

11. Review

To ensure that the enforcement function is appropriately focussed the key elements of this Local Enforcement Plan will be reviewed.

12. How to report a breach of planning control

Guidance on how to report a breach of planning control is available on the Council's website. The Council will not investigate reports where insufficient information has been supplied to substantiate the alleged breach.

The complainant will be advised if insufficient information has been supplied and given the opportunity to provide more evidence to substantiate the allegation or the seriousness of the alleged breach.

The Council encourages those wishing to report a planning breach to use the Breach form on the Council's website. This ensures that all the relevant information is provided to enable the enforcement team to identify if there is sufficient evidence of a breach and the level of prioritisation to be applied.

The number of reports of a breach does not alter the priority given to investigating the enforcement case.

13. Privacy Statement:

The Council has published its Privacy Notice which sets out how data will be handled and made available to the public. A copy of the latest version of the Privacy Notice can be viewed on the Council's website.

Complaints about the handling of an enforcement case will be investigated in accordance with the Council's complaints procedure. This process will only consider how the case is or has been investigated. It is not a process to review the decision made on an enforcement case.

14. Flow chart

The flowchart shows the key stages involved in the enforcement process. The time taken for each stage will vary depending on the nature/complexity of the reported breach and the degree of planning harm arising from the reported unauthorised development.



Planning Enforcement Typical Process

RECEIPT

Is there sufficient information to substantiate breach

No

No Case / Breach

Yes

What Category of Breach

If not one of 3 categories

Decline to investigate

If one of 3 categories

ACKNOWLEDGEMENT & recording of case

SITE VISIT & INVESTIGATION

INITIAL PLANNING ASSESSMENT

Should an application be invited*

No

Close (with WM agreement where necessary) / progress to Formal Assessment / Re-assess Category of Breach

Yes

Invite application
(2 months to submit)

NEGOTIATION (If appropriate)

AWAIT DETERMINATION OF APPLICATION (IF INVITED)

Application approved*

Yes

Close case (no agreement required)

No

ASSESSMENT FOR FORMAL ACTION

Is action considered necessary and expedient

No

Close with WM agreement

Yes

Seek WM agreement where necessary

REGULATORY COMMITTEE

Where Ward Member does not agree to case being closed or action being taken

FORMAL ACTION

* Where breach is more severe cases may move directly to formal action